

Country Groups D:1 or E:2 the direct product of the plant or major component thereof, if such foreign produced direct product is subject to national security controls as identified on the CCL or is subject to State Department controls under the U.S. Munitions List (22 CFR part 121).

(2) *Required assurance for export of software.* You may not export or reexport software under this License Exception until you have received from the importer a written assurance that, without a BIS license or License Exception, the importer will neither:

(i) Reexport or release the software or the source code for the software to a national of a country in Country Groups D:1 or E:2; nor

(ii) Export to Country Groups D:1 or E:2 the direct product of the software, if such foreign produced direct product is subject to national security controls as identified on the CCL. (See General Prohibition Three, §736.2(b)(3) of the EAR).

(3) *Form of written assurance.* The required assurance may be made in the form of a letter or any other written communication from the importer, including communications via facsimile, or the assurance may be incorporated into a licensing agreement that specifically includes the assurances. An assurance included in a licensing agreement is acceptable only if the agreement specifies that the assurance will be honored even after the expiration date of the licensing agreement. If such a written assurance is not received, License Exception TSR is not applicable and a license is required. The license application must include a statement explaining why assurances could not be obtained.

(4) *Other License Exceptions.* The requirements in this License Exception do not apply to the export of technology or software under other License Exceptions, or to the export of technology or software included in an application for the foreign filing of a patent, provided the filing is in accordance with the regulations of the U.S. Patent Office.

(b) *Reporting requirements.* See §743.1 of the EAR for reporting requirements for exports of certain items under License Exception TSR. Note that re-

ports are not required for release of technology or source code subject to the EAR to foreign nationals in the U.S. under the provisions of License Exception TSR.

[61 FR 64275, Dec. 4, 1996, as amended at 63 FR 50520, Sept. 22, 1998; 63 FR 55019, Oct. 14, 1998; 69 FR 5690, Feb. 6, 2004]

§ 740.7 Computers (APP).

(a) *Scope.* (1) *Commodities.* License Exception APP authorizes exports and reexports of computers, including “electronic assemblies” and specially designed components therefor controlled by ECCN 4A003, *except* ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. When evaluating your computer to determine License Exception APP eligibility, use the APP parameter to the exclusion of other technical parameters in ECCN 4A003.

(2) *Technology and software.* License Exception APP authorizes exports of technology and software controlled by ECCNs 4D001 and 4E001 specially designed or modified for the “development”, “production”, or “use” of computers, including “electronic assemblies” and specially designed components therefor classified in ECCN 4A003, *except* ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), to Computer Tier countries as provided by this section. Technology for computers controlled for missile technology (MT) reasons are not eligible for License Exception APP.

(b) *Restrictions.* (1) Related equipment controlled under ECCN 4A003.g may not be exported or reexported under this License Exception when exported or reexported separately from eligible computers authorized under this License Exception.

(2) *Access and release restrictions.* (i) *Computers and software.* Computers and software eligible for License Exception APP may not be accessed either physically or computationally by nationals of Cuba, Iran, North Korea, Sudan, or Syria, except that commercial consignees described in Supplement No. 3

to part 742 of the EAR are prohibited only from giving such nationals user-accessible programmability.

(ii) *Technology and source code.* Technology and source code eligible for License Exception APP may not be released to nationals of Cuba, Iran, North Korea, Sudan, or Syria.

(3) Computers and software eligible for License Exception APP may not be reexported or transferred (in country) without prior authorization from BIS, *i.e.*, a license, a permissive reexport, another License Exception, or “No License Required”. This restriction must be conveyed to the consignee, via the Destination Control Statement, see § 758.6 of the EAR. Additionally, the end-use and end-user restrictions in paragraph (b)(5) of this section must be conveyed to any consignee in Computer Tier 3.

(4) You may not use this License Exception to export or reexport items that you know will be used to enhance the APP beyond the eligibility limit allowed to your country of destination.

(5) License Exception APP does not authorize exports and reexports for nuclear, chemical, biological, or missile end-users and end-uses subject to license requirements under § 744.2, § 744.3, § 744.4, and § 744.5 of the EAR. Such exports and reexports will continue to require a license and will be considered on a case-by-case basis. Reexports and transfers (in country) to these end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

(6) Foreign nationals in an expired visa status are not eligible to receive deemed exports of technology or source code under this License Exception. It is the responsibility of the exporter to ensure that, in the case of deemed exports, the foreign national maintains a valid U.S. visa, if required to hold a visa from the United States.

(c) *Computer Tier 1 destinations.* (1) Eligible destinations. The destinations that are eligible to receive exports and reexports under paragraph (c) of this section include: Antigua and Barbuda, Argentina, Aruba, Australia, Austria, Bahamas (The), Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Bulgaria, Burkina Faso, Burma, Burundi,

Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo (Democratic Republic of the), Congo (Republic of the), Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, East Timor, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia (The), Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Kiribati, Korea (Republic of), Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nauru, Nepal, Netherlands, Netherlands Antilles, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and the Grenadines, Sao Tome & Principe, Samoa, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Surinam, Swaziland, Sweden, Switzerland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Turkey, Tuvalu, Uganda, United Kingdom, Uruguay, Vatican City, Venezuela, Western Sahara, Zambia, and Zimbabwe.

(2) Eligible commodities. All computers, including electronic assemblies and specially designed components therefore are eligible for export or reexport under License Exception APP to Tier 1 destinations, subject to the restrictions in paragraph (b) of this section.

(3) Eligible technology and software. (i) Technology and software described in paragraph (a)(2) of this section for computers of unlimited APP are eligible for export or reexport under License Exception APP to: Australia, Austria, Belgium, Canada, Denmark,

Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, or the United Kingdom; and

(ii) “Development” and “production” technology and source code described in paragraph (a)(2) of this section for computers with a APP less than or equal to 0.1 Weighted TeraFLOPS (WT) are eligible for deemed exports under License Exception APP to foreign nationals of Tier 1 destinations, other than the destinations that are listed in paragraph (c)(3)(i) of this section, subject to the restrictions in paragraph (b) of this section.

(iii) “Use” technology and source code described in paragraph (a)(2) of this section for computers with a APP less than or equal to 0.75 WT are eligible for deemed exports under License Exception APP to foreign nationals of Tier 1 destinations, other than the destinations that are listed in paragraph (c)(3)(i) of this section, subject to the restrictions in paragraph (b) of this section.

(d) *Computer Tier 3 destinations*—(1) Eligible destinations. Eligible destinations under paragraph (d) of this section are Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Cambodia, China (People’s Republic of), Comoros, Croatia, Djibouti, Egypt, Georgia, India, Iraq, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lebanon, Libya, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Montenegro, Morocco, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Serbia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen.

(2) Eligible commodities. None.

(3) Eligible technology and source code. (i) “Development,” and “production” technology and source code described in paragraph (a)(2) of this section for computers with a APP less than or equal to 0.1 Weighted TeraFLOPS (WT) are eligible for deemed exports under License Exception APP to foreign nationals of Tier 3 destinations as described in paragraph (d)(1) of this section, subject to the re-

strictions in paragraph (b) and the provisions of paragraph (d)(4) of this section.

(ii) “Use” technology and source code described in paragraph (a)(2) of this section for computers with an APP less than or equal to 0.75 WT are eligible for deemed exports under License Exception APP to foreign nationals of Tier 3 destinations as described in paragraph (d)(1) of this section, subject to the restrictions in paragraph (b) and the provisions of paragraph (d)(4) of this section.

(4) Foreign National Review (FNR) requirement for deemed exports. (i) *Submission requirement*. Prior to disclosing eligible technology or source code to a foreign national of a Computer Tier 3 country that is not also a country listed in Country Group B in Supplement No. 1 to part 740 of the EAR under this License Exception, you must submit a Foreign National Review (FNR) request to BIS, as required under § 748.8(s) of the EAR. Your FNR request must include information about the foreign national required under § 748.8(t) of the EAR and set forth in Supplement No. 2 of part 748 of the EAR.

(ii) *Confirmation of eligibility*. You may not use License Exception APP, until you have obtained confirmation of eligibility by calling the System for Tracking Export License Applications (STELA), see § 750.5 for how to use STELA, or electronically from the Simplified Network Application Procedure (SNAP), see <http://www.bis.doc.gov/SNAP/index.htm> for more information about SNAP.

(iii) *Action by BIS*. Within nine business days of the registration of the FNR request, BIS will electronically refer the FNR request for interagency review, or if necessary return the FNR request without action (e.g., if the information provided is incomplete). Processing time starts at the point at which the notification is registered into BIS’s electronic system.

(iv) *Review by other departments or agencies*. The Departments of Defense, State, Energy, and other agencies, as appropriate, may review the FNR request. Within 30 calendar days of receipt of the BIS referral, the reviewing

§ 740.8

agency will provide BIS with a recommendation either to approve or deny the FNR request. A reviewing agency that fails to provide a recommendation within 30 days shall be deemed to have no objection to the final decision of BIS.

(v) *Action on the FNR Request.* After the interagency review period, BIS will promptly notify the applicant regarding the FNR request, *i.e.*, whether the FNR request is approved, denied, or more time is needed to consider the request.

(e) *Reporting requirements.* See § 743.1 of the EAR for reporting requirements of certain items under License Exception APP.

[71 FR 20883, Apr. 24, 2006, as amended at 71 FR 51717, Aug. 31, 2006; 71 FR 68439, Nov. 27, 2006]

§ 740.8 Key management infrastructure (KMI).

(a) *Scope.* License Exception KMI authorizes the export and reexport of certain encryption software and equipment.

(b) *Eligible commodities and software.*
(1) Recovery encryption commodities and software of any key length controlled under ECCNs 5A002 and 5D002 that have been classified after a technical review through a classification request. Key escrow and key recovery commodities and software must meet the criteria identified in Supplement No. 4 to part 742 of the EAR.

(2) For such classification requests, indicate “License Exception KMI” in block 9 on Form BIS-748P. Submit the original request to BIS in accordance with § 748.3 of the EAR and send a copy of the request to:

Attn: ENC Encryption Request Coordinator,
9800 Savage Road, Suite 6940, Fort Meade,
MD 20755-6000.

(c) *Eligible destinations.* License Exception KMI is available for all destinations, except destinations in Country Group E:1 (see Supplement No. 1 to this part).

(d) *Reporting requirements.* (1) You must provide semiannual reports to BIS identifying:

(i) Ultimate consignee; specific end-user name and address, if available;

15 CFR Ch. VII (1–1–07 Edition)

and country of ultimate destination; and

(ii) Quantities of each encryption item shipped.

(2) You must submit reports no later than February 1 and no later than August 1 of any given year.

[61 FR 68579, Dec. 30, 1996, as amended at 63 FR 50520, Sept. 22, 1998; 63 FR 72159, Dec. 31, 1998; 65 FR 2496, Jan. 14, 2000; 66 FR 42109, Aug. 10, 2001; 70 FR 22249, Apr. 29, 2005]

§ 740.9 Temporary imports, exports, and reexports (TMP).

This License Exception authorizes various temporary exports and reexports; exports and reexports of items temporarily in the United States; and exports and reexports of beta test software.

(a) *Temporary exports and reexports—*
(1) *Scope.* You may export and reexport commodities and software for temporary use abroad (including use in international waters) subject to the conditions and exclusions described in paragraph (a)(4) of this section. Commodities and software shipped as temporary exports or reexports under the provisions of this paragraph (a) must be returned to the country from which they were exported as soon as practicable but, except in circumstances described in this section, no later than one year from the date of export. This requirement does not apply if the commodities and software are consumed or destroyed in the normal course of authorized temporary use abroad or an extension or other disposition is permitted by the EAR or in writing by BIS.

(2) *Eligible commodities and software.* The following commodities and software are eligible to be shipped under this paragraph (a):

(i) *Tools of trade.* Usual and reasonable kinds and quantities of tools of trade (commodities and software) for use in a lawful enterprise or undertaking of the exporter. The transaction must meet the requirements of paragraph (a)(2)(i)(A) or paragraph (a)(2)(i)(B) of this section. Exports of items controlled under ECCN 5D992 are permitted pursuant to this section. For other exports under this License Exception of laptops, handheld devices and other computers and equipment